

APPENDIX A

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JUL 2 2021

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

JAMES CONERLY; et al.,

Plaintiffs-Appellants,

v.

JOHN PATRICK WINN; et al.,

Defendants-Appellees.

No. 20-17118

D.C. No. 2:20-cv-01833-JAM-AC

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
John A. Mendez, District Judge, Presiding

Submitted June 21, 2021**

Before: SILVERMAN, WATFORD, and BENNETT, Circuit Judges.

James and Carina Conerly and Marilyn Tillman-Conerly appeal pro se from the district court's judgment dismissing sua sponte their action alleging claims based on their state court custody proceedings. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a district court's dismissal for lack of subject

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

matter jurisdiction based on the *Roquer-Feldman* doctrine. *Noel v. Hall*, 341 F.3d 1148, 1154 (9th Cir. 2003). We affirm.

The district court properly dismissed plaintiffs' action for lack of subject matter jurisdiction under the *Roquer-Feldman* doctrine because it was a "de facto appeal" of a prior state court decision and plaintiffs raised claims that were "inextricably intertwined" with that state court decision. *See id.* at 1163-65 (discussing the *Roquer-Feldman* doctrine); *see also Cooper v. Ramos*, 704 F.3d 772, 782 (9th Cir. 2012) (explaining that claims, as well as requests for damages, are "inextricably intertwined" with the state court decisions where federal adjudication "would impermissibly undercut the state ruling on the same issues" (citation and internal quotation marks omitted)).

We reject as meritless plaintiffs' contention that the district court was biased against them.

Plaintiffs' motion to supplement their brief (Docket Entry No. 5) is granted. The exhibits attached to the motion include private information. The Clerk is directed to seal the exhibits.

AFFIRMED.

APPENDIX B

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

JUDGMENT IN A CIVIL CASE

JAMES CONERLY, ET AL.,

CASE NO: 2:20-CV-01833-JAM-AC

V.

JOHN PATRICK WINN, ET AL.,

Decision by the Court. This action came before the Court. The issues have been tried, heard or decided by the judge as follows:

IT IS ORDERED AND ADJUDGED

**THAT JUDGMENT IS HEREBY ENTERED IN ACCORDANCE WITH THE
COURT'S ORDER FILED ON 10/15/2020**

**Keith Holland
Clerk of Court**

ENTERED: October 15, 2020

by: /s/ K. Zignago

Deputy Clerk

MIME-Version:1.0 From:caed_cmecf_helpdesk@caed.uscourts.gov To:CourtMail@localhost.localdomain
Carina Conerly
1501 Amazon Ave.
Sacramento CA 95835
, James Conerly
1501 Amazon Ave.
Sacramento CA 95835
, Marilyn Tillman-Conerly
1501 Amazon Ave.
Sacramento CA 95835 .

---Case Participants: Magistrate Judge Allison Claire (caed_cmecf_ac@caed.uscourts.gov), District Judge
John A. Mendez (caed_cmecf_jam@caed.uscourts.gov)
---Non Case Participants:
---No Notice Sent:
Message-Id: Subject:Activity in Case 2:20-cv-01833-JAM-AC (PS) Conerly et al v. Winn et al Judgment.
Content-Type: text/html

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U.S. District Court

Eastern District of California - Live System

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Case Name: (PS) Conerly et al v. Winn et al

Case Number: 2:20-cv-01833-JAM-AC

Filer:

WARNING: CASE CLOSED on 10/15/2020

Document Number: 14

Docket Text:

JUDGMENT dated *10/15/2020* pursuant to order signed by District Judge John A. Mendez on 10/14/2020. (Zignago, K.)

2:20-cv-01833-JAM-AC Notice has been electronically mailed to:

2:20-cv-01833-JAM-AC Electronically filed documents must be served conventionally by the filer to:
Carina Conerly
1501 Amazon Ave.
Sacramento CA 95835

James Conerly
1501 Amazon Ave.
Sacramento CA 95835

Marilyn Tillman-Conerly
1501 Amazon Ave.
Sacramento CA 95835

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2
3
4
5 UNITED STATES DISTRICT COURT
6 FOR THE EASTERN DISTRICT OF CALIFORNIA
7

8 JAMES CONERLY, et al.,

9 Plaintiffs,

10 v.

11 HON. JOHN P WINN, et al.,

12 Defendants.
13

No. 2:20-cv-1833 JAM AC

ORDER

14 Plaintiff proceeds in this action in pro per [and in forma pauperis]. The matter was
15 referred to a United States Magistrate Judge pursuant to Local Rule 302(c)(21).

16 On September 16, 2020, the magistrate judge filed findings and recommendations herein
17 which were served on plaintiff and which contained notice to plaintiff that any objections to the
18 findings and recommendations were to be filed within twenty one days. ECF No. 4. Plaintiff has
19 filed objections to the findings and recommendations. ECF No. 10.

20 The court has reviewed the file and finds the findings and recommendations to be
21 supported by the record and by the magistrate judge's analysis. Accordingly, IT IS HEREBY
22 ORDERED that:

- 23 1. The findings and recommendations filed September 16, 2020, are adopted in full;
24 2. This case is DISMISSED for lack of subject matter jurisdiction.

25 DATED: October 14, 2020

/s/ John A. Mendez

26 THE HONORABLE JOHN A. MENDEZ
27 UNITED STATES DISTRICT COURT JUDGE
28

MIME-Version:1.0 From:caed_cmecf_helpdesk@caed.uscourts.gov To:CourtMail@localhost.localdomain
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Notice of Electronic Filing

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Case Name: (PS) Conerly et al v. Winn et al

Case Number: 2:20-cv-01833-JAM-AC

Filer:

WARNING: CASE CLOSED on 10/15/2020

Document Number: 13

Docket Text:

ORDER signed by District Judge John A. Mendez on 10/14/2020 ADOPTING [4] Findings and Recommendations in full. This case is DISMISSED for lack of subject matter jurisdiction.
CASE CLOSED. (Zignago, K.)

2:20-cv-01833-JAM-AC Notice has been electronically mailed to:

2:20-cv-01833-JAM-AC Electronically filed documents must be served conventionally by the filer to:

Carina Conerly
1501 Amazon Ave.
Sacramento, CA 95835

James Conerly
1501 Amazon Ave.
Sacramento, CA 95835

Marilyn Tillman-Conerly
1501 Amazon Ave.
Sacramento, CA 95835

The following document(s) are associated with this transaction:

APPENDIX C

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

RECEIVED
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U.S. COURT OF APPEALS

DEC 21 2020

FILED _____
DOCKETED _____
DATE _____ INITIAL _____

James Conerly, Marilyn Tillman-Conerly, 9th Cir. Case No. 20-17118
and Carina Conerly.
Appellant(s),

vs.

District Court or
BAP Case No. 2:20-cv-1833 JAM AC

John Patrick Winn, Sharif Roldan Tarpin,
and Kiana R Turner.
Appellee(s).

APPELLANT'S INFORMAL OPENING BRIEF

(attach additional sheets as necessary, up to a total of 50 pages including this form)

JURISDICTION. This information helps the court determine if it can review your case.

1. Timeliness of Appeal:

- a. What is the date of the judgment or order that you want this court to review? October 15, 2020
- b. Did you file any motion, other than for fees and costs, after the judgment was entered? Answer yes or no: No

• If you did, on what date did you file the motion? N/A

- For prisoners or detainees, what date did you give the motion to prison authorities for mailing? N/A
- What date did the district court or bankruptcy appellate panel (BAP) decide the motion that you filed after judgment? N/A

c. What date did you file your notice of appeal? October 23, 2020

- For prisoners or detainees, what date did you give your notice of appeal to prison authorities for mailing? N/A

FACTS. Include all facts that the court needs to know to decide your case.

2. What are the facts of your case?

On August 27, 2020, Judge John Patrick Winn issued his “Findings and Order After Hearing” which affected Plaintiffs Carina Conerly, M.T., James Conerly, and Marilyn Tillman-Conerly. The order stated in part, “All exchanges shall take place in the parking lot of South Natomas Library and Park on Truxel Road in Sacramento. There shall be no videotaping of this report, shall remain in full force and effect.” (**EXHIBIT A**).

On July 11, 2020 minor M.T. was in the custody of defendants, her father Sharif Roldan Tarpin and Kiana Turner when minor M.T. was severely injured. Defendants Sharif Tarpin and Kiana Turner failed to take minor M.T. to the hospital emergency room. When Plaintiffs Carina Conerly, James Conerly, and Marilyn Tillman Conerly arrived to pick minor M.T. up, defendant Sharif Roldan Tarpin was acting rather strangely when he walked minor M.T. over to the car where all Plaintiffs were waiting. Kiana Turner aided and abetted Sharif Tarpin (**EXHIBIT B**). She also purposely put coconut oil into M.T.’s hair, purposely, because Sharif Tarpin knew that Carina Conerly was allergic to coconut. Kiana Turner provided her vehicle for Sharif Tarpin to use because his vehicle reeked with Marijuana (**EXHIBIT C**). Sharif Tarpin smokes Marijuana while he is driving and parked in public. Kiana assisted Sharif in covering-up the injuries done to M.T. Both of them knew and know that M.T. is not provided adequate living arrangements (**EXHIBIT D**). Without asking, M.T. constantly tells us that she doesn’t want to go with Sharif.

She is saddened when we drop her off. John Patrick Winn is assisting Sharif Tarpin. John Patrick Winn not only assist Sharif Tarpin and Kiana Turner, he makes orders to enforce Carina Conerly, Marilyn Tillman-Conerly, and James Conerly to turn over M.T. to Sharif Tarpin and Kiana Turner. John Patrick Winn continues to violate all Plaintiffs from exercising our 1ST Amendment rights to free speech and due process (EXHIBIT A). We can't videotape anyone at the exchange (Police) Sharif Tarpin, Kiana Turner, and Sharif Tarpin's family and friends, etc., who also aided and abetted Sharif Tarpin, to include she provides his transportation (EXHIBIT E). He wants to stop evidence of Sharif Tarpin's bad conduct. The photos showed Sharif Tarpin's wrong doings and bad conduct. My court hearings are continuously violated when John Patrick Winn continues to not Recuse himself (EXHIBIT A, C, D). He sometimes allows James Conerly and Marilyn Tillman-Conerly to testify as witnesses; however, John Patrick Winn takes no credibility in James Conerly's and Marilyn Tillman-Conerly's' Testimony about Sharif Tarpin. May 20, 2020 and July 16, 2020, Judge John Patrick Winn wouldn't allow Plaintiffs James Conerly and Marilyn Tillman-Conerly to testify as witnesses for Carina Conerly. All Defendants strategically orchestrated and or agreed to put together tactics to violate all Plaintiffs Civil Rights. All Defendants acts directly affects and are done in bad interest of M.T., for example, Judge John Patrick Winn's order concerning M.T.'s health violates M.T.'s medical diagnosis, treatment, and provisions because M.T. cannot get her regular doctor's check-up and Treatments (EXHIBIT A, D). After our lawsuits the State of California and other Defendants; here again Defendant Sharif Tarpin came into the picture. Sharif Tarpin has never gotten involved in the past four years with M.T.'s doctor concerns. The only time he was present before Doctor Candace Jones, who is M.T.'s Pediatric Doctor, was when M.T. was born. He has abandoned M.T. in her health support; that is why my father, James Conerly, stepped up to the plate to attend every visit with Doctor Candace Jones with myself and M.T. to ensure M.T. got the best of medical treatment. My father, James Conerly, and my mother, Marilyn Tillman-Conerly, are very good help with M.T., not only in medical needs, but all other needs and support when it comes to the best interest of M.T., and not to forget Black Issues, which none of

the aforementioned Defendants can give to her, and these needs are so many today, that Defendants will never experience nor know. All of these Defendants do not care the least bit about M.T. but acts to serve their own, and each other's interests and purpose, and interests (which we choose not to list at this time). That is why we are fighting with all our legal Constitutional Rights to help M.T., not us so much. We want to show the surprising evidence that we now have and that is coming, Please? To include Doctor Candace Jones as a witness. Because again, my father has been at every doctor's appointment with M.T. and Carina Conerly. James Conerly is confirming what he has done with Carina Conerly because he truly and faithfully cares and practices what he preaches "Good Conduct" of a Godly Father to his children and his Grand-Children. That's in the best interest of M.T. M.T. is only now being hindered from having a good and healthy life, that is free from drugs abuse, alcohol abuse, Marijuana abuse and many other bad behaviors. Why is it that she sustained injuries now and it has been caused by Sharif Tarpin in such short time that she has been in his custody? Has anyone noticed this other than Plaintiffs? We are the ones who knows why, because we know that Sharif Tarpin's conduct is nothing but bad and we will do everything, to expose this truth. Check-out Sharif Tarpin's friends, check-out Sharif Tarpin's automobile, check-out all the kinds of places Sharif Tarpin goes out to, check-out Sharif Tarpin associates, check-out Sharif Tarpin's blood test, simply just check-out his conduct? Maybe someone else should check out his need for weapons especially since he has been caught with a concealed weapon without a weapon permit (EXHIBIT C). Fortunately, we won't give up the fight for M.T.'s best interest to be restored. In this case, legally we are on it, no matter what the cost. We feel that if relatives of every child had this support, there will be no need for lawful interventions of the Court, and the children will be safe and well taken care of.

PROCEEDINGS BEFORE THE DISTRICT COURT OR THE BAP. In this section, we ask you about what happened before you filed your notice of appeal with this court.

3. What did you ask the district court or the BAP to do—for example, did you

ask the court to award money damages, issue an injunction, or provide some other type of relief?

- Plaintiffs requested Rights to Substantive and Procedural Due Process to Rightfully, Justly, and Freely pursue our Justice within the Courts.
- Plaintiffs requested to exercise Rights to videotape in public.
- Plaintiffs requested to exercise Civil Rights Fair and Equal Treatment without interference because of being Black.
- Plaintiffs requested disciplinary action be taken against John Patrick Winn and he be recused from Plaintiff Carina Conerly's case.
- Plaintiffs request reasonable of compensation for actual-damages, ongoing-damages.
- Plaintiffs request that all Orders made by John Patrick Winn be revoked and Plaintiff Carina Conerly be given sole legal and physical custody of M.T. .
- Plaintiffs request that they be compensated for legal fees, administrative fees, pain, suffering, all other fees associated with violations of Plaintiffs Civil Rights done by Defendants. Plaintiffs request compensation in the amount of \$1,000,000.00 and awarded compensation for Punitive damages in an amount to be determined.

4. **What legal claim or claims did you raise in the district court or at the BAP?**
SYSTEMIC RACISM AGAINST BLACK PLAINTIFFS

Defendants conspired to violate Plaintiffs' Civil Rights.

Defendants Violated Plaintiffs' Constitutional Right to Freedom of Speech under then 1st Amendment.

Defendants violated Plaintiffs' Constitutional Right to Due Process under the 14th Amendment.

Plaintiffs hereby assert that our Rights of Free Speech (including to videotape in public)

Guarantee in the 1st Amendment of our United States of America Constitution, our Rights to Due Process Under The 14th Amendment of Our United State of America Constitution (including, us rights to access our Justice) Constitution have been violated by Defendants herein listed.

Plaintiffs hereby states, our Rights Under Our Civil Rights Act (including our Rights to equal and fair treatment regardless that we are Blacks) have been violated by Defendants herein stated.

John Patrick Winn be recused from Carina Conerly's case and disciplinary acts be taken against him; moreover, all existing orders involving the Carina Conerly v. Sharif Tarpin be expunged. Plaintiffs are entitled to receive our reasonable-amount of actual damages for ongoing damages, reasonable payment revoked and given Carina Conerly Sole custody of M.T., for pain and suffering, payment for legal and administrative fees, and any and all other injuries, harm, damages, and losses caused by Defendants' acts or failure to act, in the amount of \$1,000,000.00 each, and punitive damages of an amount to be determined.

5. **Exhaustion of Administrative Remedies.** For prisoners, did you use up all administrative remedies for each claim before you filed your complaint in the district court? If you did not, please tell us why. N/A

PROCEEDINGS BEFORE THE COURT OF APPEALS. In this section, we ask you about issues related to this case before the court of appeals and any previous cases you have had in this court.

- CASE No. 20-17029, D.C. No. 2:19-cv-1021-KJM-KJN James Conerly, Carina Conerly, Marilyn Tillman-Conerly, and M.T. v. Veracity Research Company, and Kristy Torain.
- Case No. 20-16679, D.C. No. 2:20-cv-00362-KJM-KJN Carina Conerly, and M.T. v. Olubunmi Olaide Awoniyi, Uduak Inyang Oduok, Superior Court of California County of Sacramento, Sharif Roldan Tarpin, and John Patrick Winn.

6. What issues are you asking the court to review in this case? What do you think the district court or the BAP did wrong?
District Court Abused its discretion by Judges' **adversarial conduct** toward Plaintiffs; acted bias toward Plaintiffs (manner in which they ordered Plaintiffs to perform, failing to acknowledge proper service, delaying (holding hostage) Plaintiffs' cases to allow advantages to Defendants, improperly posting and in some circumstance not posting, information on "PACER, searching and trying to find Defaulted Defendants to try to renew the case for Defaulted Defendants to answer, retaliating because Plaintiffs declined to have Magistrate Judge to handle their case failing to appoint counsel for Plaintiff, withholding representation for minor M.T.

Court Abused its discretion in the Dismissal for Lack of Subject Matter
Jurisdiction, Denying Plaintiffs' Right to Default Judgments for, Disregarding
And Failed to consider Plaintiffs' motion for default judgment, and Ordering
the Plaintiffs' case be closed.

7. Did you present all issues listed in Question 6 to the district court or the BAP?
Answer yes or no: Yes.

If not, why not? N/A

8. What law supports these issues on appeal? (You may refer to cases and statutes, but you are not required to do so.)
The laws to support the issues on appeal are the 1st Amendment of the United States Constitution,
14th Amendment of the United States Constitution, and Civil Rights Act of 1964.

9. **Other Pending Cases.** Do you have any other cases pending in the court of appeals? If so, give the name and docket number of each case.
- Case No. 20-16679, D.C. No. 2:20-cv-00362-KJM-KJN Carina Conerly, and M.T. v. Olubunmi
Olaide Awoniyi, Uduak Inyang Oduok, Superior Court of California County of Sacramento, Sharif
Roldan Tarpin, and John Patrick Winn.
 - CASE No. 20-17029, D.C. No. 2:19-cv-1021-KJM-KJN James Conerly, Carina Conerly,
Marilyn Tillman-Conerly, and M.T. v. Veracity Research Company, and Kristy Torain.

10. **Previous Cases.** Have you filed any previous cases that the court of appeals
has decided? If so, give the name and docket number of each case: No
James Conerly, Marilyn Tillman-Conerly

Carina Conerly

Name

1501 Amazon Avenue

Sacramento, Ca 95835

Address

Marilyn Tillman Conerly
Carina Conerly
Signatures

December 21, 2020

Date

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

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- You must attach a certificate of service to each document you send to the court and to opposing counsel.
- Include the title of the document you are serving, the name and address of each person you served with a copy of the document, and the date of mailing or hand delivery.
- Sign and date the certificate. You do not need to have the certificate notarized.
- Remember that you must send a copy of **all** documents and attachments to counsel for **each** party to this case.

9th Cir. Case Number(s) 20-17118

Case Name James Conerly, Marilyn Tillman-Conerly, and Carina Conerly vs. John Patrick Winn, Sharif Roldan Tarpin, and Kiana R Turner

I certify that I served on the person(s) listed below, either by mail or hand delivery, a copy of the Appellant's Informal Opening Brief and any attachments.

Signature  **Date** December 21, 2020

Name	Address	Date Served
John Patrick Winn	c/o Department of Justice, 1300 I Street, Sacramento, CA 95814	December 21, 2020
Sharif Roldan Tarpin	201 Country Place #190 Sacramento, CA 95831	December 21, 2020
Kiana R Turner	201 Country Place #190 Sacramento, CA 95831	December 21, 2020

Mail this form to the court at:

Clerk, U.S. Court of Appeals for the Ninth Circuit, P.O. Box 193939, San Francisco, CA 94119-3939

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov

APPENDIX D

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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
10

11 JAMES CONERLY, et al.,

12 Plaintiffs,

13 v.

14 HON. JOHN P. WINN, et al.,

15 Defendants.
16

No. 2:20-cv-01833 JAM AC PS

FINDINGS AND RECOMMENDATIONS

17 Plaintiffs are proceeding in this action pro se. This proceeding was referred to the
18 undersigned by Local Rule 302(c)(21). Plaintiffs have paid the filing fee, and new civil case
19 documents have issued. ECF No. 3. Upon review of the complaint, the undersigned concludes
20 that the court lacks subject matter jurisdiction to hear this case and recommends that it be
21 dismissed.

22 **I. The Complaint**

23 Plaintiffs Carina Conerly and her parents Marilyn Tillman-Conerly and James Conerly are
24 suing Judge John Patrick Winn of the Superior Court of California, Sharif Roldan Tarpin, and
25 Kiana Turner for alleged constitutional violations related to custody orders involving a minor
26 child. ECF No. 1 at 2. Plaintiffs assert their basis for jurisdiction is 28 U.S.C. §1331, federal
27 question jurisdiction. The facts alleged are as follows.

28 On August 27, 2020, Judge Winn issued an order which impacted plaintiffs Carina

1 Conerly, James Conerly, and Marilyn Tillman-Conerly in the care of minor child M.T. ECF No.
2 1 at 3. The order stated in relevant part that "All exchanges shall take place in the parking lot of
3 South Natomas Library and Park on Truxel Road in Sacramento. There shall be no videotaping
4 of this report, shall remain in full force and effect." Id. On July 11, 2020, M.T. was in the
5 custody of her father, defendant Sharif Roldan Tarpin, and defendant Kiana Turner, when M.T.
6 was severely injured. Id. Defendants failed to take M.T. to the emergency room. Id. Plaintiffs
7 allege that when they went to pick M.T. up, defendant Tarpin was acting strangely. Id. They
8 allege plaintiff Turner put coconut oil in M.T.'s hair knowing that Carina Conerly was allergic to
9 coconut. Id. Plaintiffs allege that Turner provided her vehicle to Tarpin to use because his
10 smelled of marijuana. Id. They further assert that Turner assisted Tarpin in covering up injuries
11 to M.T. and inadequacies related to M.T.'s living arrangements. Id. Plaintiffs assert that without
12 prompting, M.T. consistently asks not to go with Tarpin and is sad when she is dropped off with
13 him. Id.

14 Plaintiffs allege that Judge Winn is assisting Turner and Tarpin. Id. Judge Winn
15 consistently orders plaintiffs to turn over M.T. to Tarpin and Turner. Id. They claim that Judge
16 Winn is violating their First Amendment rights to free speech and due process by not allowing the
17 videotaping of exchanges of M.T. Id. Plaintiffs allege the court hearings in front of Judge Winn
18 violate their rights because Judge Winn refuses to recuse himself and he continually discredits the
19 testimony of James Conerly and Marilyn Tillman Conerly about Sharif Tarpin. Id. On several
20 occasions, Judge Winn refused to allow plaintiffs to testify. Id. at 3-4.

21 Plaintiffs assert their right to free speech under the First Amendment and their right to
22 Due Process under the Fourteenth amendment have been violated by defendants, particularly their
23 right to videotape in public. Id. at 5. They ask the court to force Judge Winn to recuse himself
24 from Carina Conerly's case and for disciplinary action to be taken against him. Id. Plaintiffs
25 seek damages in the amount of \$1,000,000 from each defendant and "moreover all existing orders
26 involving the Carina Conerly v. Sharif Tarpin be [(missing word)]." Id. at 5. The court
27 presumes, based on the contents of the complaint, that plaintiffs wish the orders to be vacated.

28 ///

II. Analysis

1. Sua Sponte Dismissal for Lack of Subject Matter Jurisdiction

Federal courts are courts of limited jurisdiction; a federal court generally has jurisdiction over a civil action when: (1) a federal question is presented in an action “arising under the Constitution, laws, or treaties of the United States” or (2) there is complete diversity of citizenship between the parties and the amount in controversy exceeds \$75,000. See 28 U.S.C. §§ 1331, 1332(a). Absence of subject matter jurisdiction requires a federal court to dismiss a case. See Ruhrgas AG v. Marathon Oil Co., 526 U.S. 574, 583 (1999) (recognizing that “Article III generally requires a federal court to satisfy itself of its jurisdiction over the subject matter before it considers the merits of a case”). Thus, “a court may raise the question of subject matter jurisdiction, sua sponte, at any time during the pendency of the action.” Snell v. Cleveland, Inc., 316 F.3d 822, 826 (9th Cir. 2002). The “presence or absence of federal-question jurisdiction is governed by the ‘well-pleaded complaint rule,’ which provides that federal jurisdiction exists only when a federal question is presented on the face of the plaintiff’s properly pleaded complaint.” Caterpillar Inc. v. Williams, 482 U.S. 386, 392 (1987).

2. This Case is Barred by the Rooker-Feldman Doctrine

Although plaintiffs’ complaint is cast as involving violations of federal law, it is clear from the content of the complaint and the remedies sought (specifically, the recusal of the judge overseeing the relevant child custody action and the apparent desire to have existing orders overturned) that they are essentially seeking to appeal state court judgments regarding child custody obligations. See Cooper v. Ramos, 704 F.3d 772, 777–78 (9th Cir. 2012) (“To determine whether an action functions as a de facto appeal, we pay close attention to the relief sought by the federal-court plaintiff.”). The court does not have jurisdiction to hear such a case.

The Rooker-Feldman doctrine¹ prohibits federal district courts from hearing cases “brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection

¹ See Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923) and District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983).

1 of those judgments.” Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284 (2005).
2 To determine if the Rooker-Feldman doctrine bars a case, a court must first determine if the
3 federal action contains a forbidden de facto appeal of a state court judicial decision. Noel v. Hall,
4 341 F.3d 1148, 1156 (9th Cir. 2003). If it does not, “the Rooker-Feldman inquiry ends.” Bell v.
5 City of Boise, 709 F.3d 890, 897 (9th Cir. 2013). If a court determines that the action is a
6 “forbidden de facto appeal,” however, the court cannot hear the de facto appeal portion of the
7 case and, [a]s part of that refusal, it must also refuse to decide any issue raised in the suit that is
8 ‘inextricably intertwined’ with an issue resolved by the state court in its judicial decision.” Noel,
9 341 F.3d at 1158; see also Bell, 709 F.3d at 897 (“The ‘inextricably intertwined’ language from
10 Feldman is not a test to determine whether a claim is a de facto appeal, but is rather a second and
11 distinct step in the Rooker-Feldman analysis.”). A complaint is a “de facto appeal” of a state
12 court decision where the plaintiff “complains of a legal wrong allegedly committed by the state
13 court, and seeks relief from the judgment of that court.” Noel, 341 F.3d at 1163.

14 In seeking a remedy in which this court invalidates a state court decision and amends the
15 state court record, and removes a judge, plaintiffs are clearly asking this court to “review the final
16 determinations of a state court in judicial proceedings,” which is at the core of Rooker-Feldman’s
17 prohibition. In re Gruntz, 202 F.3d 1074, 1079 (9th Cir. 2000). Requests to vacate family court
18 orders are generally considered de facto appeals. Riley v. Knowles, No. 1:16-CV-0057-JLT,
19 2016 WL 259336, at *3 (E.D. Cal. Jan. 21, 2016). Requests to a federal court to reverse the
20 outcomes of family law disputes, such as divorce proceedings or child custody determinations,
21 are generally treated as de facto appeals generally barred by Rooker-Feldman. Moore v. County
22 of Butte, 547 Fed. Appx. 826, 829 (9th Cir. 2013). Therefore, plaintiff’s action constitutes a
23 “forbidden de facto appeal” and the court lacks subject matter jurisdiction to hear the case. The
24 case must be dismissed in its entirety.

25 3. Judge Winn is Absolutely Immune from Suit

26 Even if the Rooker-Feldman doctrine did not deprive this court of subject matter
27 jurisdiction, the court notes that it does not have the power to remove a state court judge from a
28 case or punish a state court judge for their judicial opinions. Judges are absolutely immune from

1 suit where, as here, they are sued for their judicial actions. Mireles v. Waco, 502 U.S. 9, 11–12
2 (1991) (per curiam) (citing Forrester v. White, 484 U.S. 219, 227–229 (1988) and Stump v.
3 Sparkman, 435 U.S. 349, 356–57 (1978)); Lonneker Farms, Inc. v. Klobucher, 804 F.2d 1096,
4 1097 (9th Cir.1986) (judge enjoys absolute judicial immunity when sued for actions that “were
5 judicial in nature and were not done in clear absence of all jurisdiction”). Plaintiff’s complaint
6 against Judge Winn is based entirely on his judicial decisions. Thus, based on the facts alleged,
7 plaintiff’s complaint against Judge Winn necessarily fails and must be dismissed.

8 III. Conclusion

9 Accordingly, the undersigned recommends that this case be DISMISSED for lack of
10 subject matter jurisdiction.

11 These findings and recommendations are submitted to the United States District Judge
12 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days
13 after being served with these findings and recommendations, plaintiff may file written objections
14 with the court and serve a copy on all parties. Id.; see also Local Rule 304(b). Such a document
15 should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Failure
16 to file objections within the specified time may waive the right to appeal the District Court’s
17 order. Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998), as amended on denial of reh’g (Nov.
18 24, 1998); Martinez v. Ylst, 951 F.2d 1153, 1156–57 (9th Cir. 1991)

19 DATED: September 15, 2020

20 
21 ALLISON CLAIRE
22 UNITED STATES MAGISTRATE JUDGE
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**FINDINGS and RECOMMENDATIONS signed by Magistrate Judge Allison Claire on 9/15/2020
RECOMMENDING that this case be dismissed for lack of subject matter jurisdiction. Referred
to Judge John A. Mendez. Objections due within 21 days after being served with these
findings and recommendations. (Tupolo, A)**

2:20-cv-01833-JAM-AC Notice has been electronically mailed to:

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